

DEC - 7 2005

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For The Northern Mariana Islands

By _____
(Deputy Clerk)*Attorney Appearing in Pro Se***IN THE UNITED STATES DISTRICT COURT****FOR THE NORTHERN MARIANA ISLANDS**

ROBERT D. BRADSHAW,

Plaintiff,

v.

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS, et al.,

Defendants.

Civil Action No. 05-0027

**NOTICE OF MOTION AND
MOTION FOR A MORE DEFINITE
STATEMENT, MOTION TO
STRIKE AND/OR MOTION TO
DISMISS FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

FEB - 9 2006

Hearing date: ~~January 19, 2006~~Time: 9:00 a.m.

TO PLAINTIFF, ROBERT D. BRADSHAW


FEB - 9 2006

NOTICE IS HEREBY GIVEN, that on ~~January 19, 2006~~ at 9:00 a.m., or as soon thereafter as the matter may be heard, defendant, JAY H. SORENSEN, will and does hereby, move the court to grant an order requiring plaintiff to amend his complaint to state his claims more definitely, or, to strike the amended complaint in its entirety, or, to dismiss the amended complaint.

This motion is made, and will be based, upon Rule 12(e), Rule 12(f), and Rule 41(b), Federal Rules of Civil Procedure, on the grounds that the amended complaint fails to make a short and plain

1 statement of the claims, using simple, concise, and direct averments, in violation of Rule 8(a) and
2 Rule 8(e), Federal Rules of Civil Procedure.

3 This motion will be based on this notice, the within memorandum of points and authorities,
4 and upon such other and further matter as may come before the court at the time of hearing.

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Jay H. Sorensen

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 Fed.R.Civ.P. 8(a) provides, in pertinent part: “A pleading which sets for a claim for relief,
11 ..., shall contain (1) a *short and plain* statement of the grounds upon which the court’s jurisdiction
12 depends, ...(2) a *short and plain* statement of the claim showing that the pleader is entitled to
13 relief,...” (Emphasis added). Fed.R.Civ.P. 8(e)(1) states: “Each averment of a pleading shall be
14 *simple, concise, and direct*. No technical forms of pleading or motions are required.” (Emphasis
15 added).

16 The amended complaint is not short and plain. It is long and complicated. It consists of 81
17 pages, containing 288 paragraphs that are intended to state 17 different causes of action. It does not
18 end with the prayer for relief, but appends as exhibits three affidavits by the plaintiff, one affidavit
19 by a non-party and 18 items of correspondence to or from plaintiff—altogether 39 pages of
20 evidentiary material.

21 The averments of the amended complaint are not simple, concise and direct. Rather, many of
22 the averments are rambling, circuitous, and collateral. It contains a great deal of argument,
23 speculation and supposition. This runs throughout the amended complaint, but discussion here will
24 focus on several examples.

1 The amended complaint contains many paragraphs that contain no fact allegations, only
 2 argument. For example, ¶ 144: “This reality and the facts outlined above plainly suggest the
 3 obstruction of justice and hiding of criminal acts by defendant BROWN in cases which were before
 4 both the CNMI SC (96-1320) and the US District Court of Idaho (05-84). “

5 It contains many paragraphs that attempt to argue legal points, even citing case authority,
 6 albeit often incomplete citation. See, e.g. ¶38 quoting and citing a district court decision from Iowa;
 7 ¶ 134, referencing what is purported to be a US Supreme Court ruling giving the title but not the
 8 citation of the case; ¶172 citing “an 10th Circuit Court of Appeals decision,” without giving the case
 9 name or citation; ¶ 262 arguing the applicability of the Civil Rights Act of 1871 to judges, citing
 10 C.J.S.; ¶264 containing a quotation from a U.S. Supreme Court case with citation. In paragraphs 31
 11 through 33 it argues the applicability of Washington state law, citing its code and a case note. Four
 12 paragraphs (28, 30, 34 and 35) quote or cite to “Federal Practice & Procedure,” Wright & Miller.

13 The amended complaint is replete with plaintiff’s opinion or his speculation as to what the
 14 facts are or what they might imply. See, e.g. ¶71 (“At some point in time, BISOM *possibly*
 15 introduced...”); ¶112 (“While he did not say so, it *seemed clear to me....*”); ¶113 (“It was then that *I*
 16 *clearly understood* that the AG had become an hostile, adversarial party. ...”); ¶130 (“*It’s possible*
 17 *that the AG was....; or it’s possible* that BISOM simply....”); ¶194 (“The actions of judge
 18 CASTRO...*raise the spectrum* that the Judge’s actions...”); ¶212 (“The actions of the CNMI
 19 Supreme Court judges *seem* to have involved a conspiratorial action...”).(Emphasis added.)

20 “The purpose of the Rule [Fed.R.Civ.P. 8] is to provide the adverse party with notice of the
 21 claims asserted and to limit the burden imposed on both courts and litigants by unnecessarily
 22 verbose and incoherent pleadings.” *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2nd Cir. 1988). The
 23 statement of the claim should be plain in that it should state facts, not conclusions of fact; otherwise
 24 the court cannot determine whether the opposing party must respond. The statement should be short
 25

1 because unnecessary prolixity places an unjustified burden on the court and the responding party.
2 Each averment should be direct because a complaint's factual allegations should be relevant to the
3 cause of action brought. *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation*, 218
4 F.R.D. 76 (S.D.N.Y. 2005).

5 If the violation of Rule 8 is such that it makes the complaint "so vague or ambiguous that a
6 party cannot reasonably be required to frame a responsive pleading," then the pleader may be
7 required to amend to bring it into compliance. Fed.R.Civ.P. 12 (e). The court may also utilize
8 Fed.R.Civ.P. 12(f) and strike "any redundant, immaterial, impertinent, or scandalous matter." In
9 addition, "[a] complaint which fails to comply with rules 8(a) and 8(e) may be dismissed with
10 prejudice pursuant to Rule 41(b)." *Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671, 673 (9th
11 Cir 1981).¹

12 The amended complaint at issue here is argumentative, prolix, replete with redundancy, and
13 largely irrelevant. It consists mostly of immaterial background information and the plaintiff's
14 musings.

15 The court should not have to deal with this mass of verbiage. The parties are likewise
16 entitled to know specifically what it is they are being sued for and what the factual basis of the
17 claims are without having to wade through all the superfluous material. "Simply stated, such
18 pleadings should not be permitted to stand in the face of the positive language of our Federal Rules
19 of Civil Procedure." *Schmidt v. Herrmann*, 614 F.2d 1221, 1224 (9th Cir 1980) (complaint of 30
20 pages with 9 pages of addenda stricken for failure to comply with Rules 8(a), 8(e) and 9(b)).

21
22 ¹ Fed.R.Civ.P. 41(b) provides in pertinent part: "For failure of the plaintiff to prosecute or to
23 comply with these rules or any order of the court, a defendant may move for dismissal of an action
24 of any claim against him..."
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1 The fact that plaintiff is without legal representation does not alter this. “Pro se litigants
 2 must follow the same rules of procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565,
 3 567 (9th Cir. 1987). The liberality of construction of pleadings that pro se litigant enjoy “does not
 4 excuse the obligation of any litigant to comply with the fundamental requirements of the Federal
 5 Rules of Civil Procedure...” *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).
 6 “Although we construe [plaintiffs’] pro se pleading liberally, they must comply with applicable
 7 procedural rules, including FED.R.CIV.P. 8.” *Wilkin v. Thomas*, 104 Fed. Appx. 140, 141 (10th Cir.
 8 2004).

9 In *Agnew v. Moody*, 330 F.2d 868 (9th Cir. 1964), a pro se plaintiff convicted of a traffic
 10 offense alleged civil rights violations against the arresting police officer, deputy attorney, municipal
 11 court judge, court reporter, clerk and bailiff in a 55 page complaint.. It held that the district court
 12 judge was “entirely justified in holding that that complaint did not comply with Rule 8(a), and in
 13 ordering appellant to replead.” *Id.* at 870.


14 As noted in his amended complaint, plaintiff filed this case previously in Idaho. See, ¶ 1 and
 15 23. In fact, by the time it was dismissed, he had filed a second amended complaint.² Thus, the
 16 complaint now before the court is plaintiff’s fifth attempt to get it right. The court is justified in
 17 dismissing it with prejudice. See, *Von Poppenheim v. Portland Boxing & Wrestling Com.*, 442 F.2d
 18 1047,1049 (9th Cir. 1971)(holding that aggravated circumstances may make dismissal under Rule
 19 41(b) appropriate, and finding plaintiff’s complaint was “prolix, confused and obscure.”)

20 If the court believes that plaintiff should have another chance to properly plead his claims,
 21 then defendant suggests that plaintiff be ordered to restate his claims in a second amended complaint
 22

23 ² *Bradshaw v. Commonwealth of the Northern Mariana Islands, et al.*, Case No. CV 05-84-N-EJL
 24 (C. Idaho 2005), p. 2,line 8.

1 within the parameters of the following directive: 1. That all allegations be of facts only. 2. Each
2 paragraph contain only one factual allegation. 3. The factual allegations, where possible, be
3 organized in chronological order. 4. Each paragraph be short and concise and state (a) what is
4 alleged to have occurred; (b) where possible, the date and location that the action is alleged to have
5 occurred; (c) which of the defendants is responsible for the alleged action; and (d) how the alleged
6 action is related to a deprivation of plaintiff's rights. See, e.g. *Washington v. Reilly*, 226 F.R.D. 170
7 (E.D.N.Y. 2005) (prisoner in pro se allowed to amend complaint attempting to state claim under 42
8 U.S.C. §1983 after motions to dismiss for failure to comply with Rules 8 and 10).

9 Respectfully submitted,

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12 Jay H. Sorensen
13 In Pro Se
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on DECEMBER 5, 2005

a copy of each of the following:

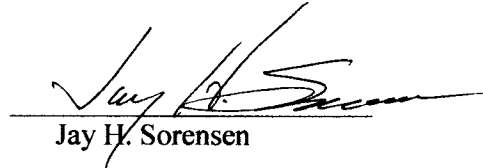
NOTICE OF MOTION AND MOTION FOR A MORE DEFINITE STATEMENT,
MOTION TO STRIKE AND/OR MOTION TO DISMISS FIRST AMENDED
COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF

EX PARTE APPLICATION UNDER LOCAL RULE 7.1 TO INCREASE TIME FOR
HEARING AND BRIEFING OF MOTIONS; CERTIFICATE MADE PURSUANT
TO RULE 7.1.h.3(b); DECLARATION IN SUPPORT

PROPOSED ORDER GRANTING APPLICATION TO INCREASE TIME FOR
BRIEFING AND HEARING OF MOTIONS

were deposited for delivery to the U.S. Post Office, first class mail, postage prepaid,
addressed as set forth below:

Robert D. Bradshaw
P.O. Box 473
1530 W. Trout Creek Road
Calder, Idaho 83808


Jay H. Sorensen